

**SUPPLEMENTARY INFORMATION:** Under the Monetary Control Act of 1980 (Title I of Pub. L. 96-221), the Board is authorized to impose Federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Transaction accounts are subject initially to a reserve requirement ratio of 3 per cent on amounts up to \$25 million and 12 per cent on amounts in excess of \$25 million. Initially, nonpersonal time deposits are subject to 3 per cent reserve ratio. The Act provides a transitional adjustment period for most nonmember depository institutions of eight years during which time such institutions will phase in to the new reserve requirements. Member banks will phase in over a four-year period from existing reserve requirements to the new, generally lower reserve requirements. Under the Act, however, any category of deposit accounts first authorized under Federal law in any State after April 1, 1980, will not be subject to the phase-in provisions. (See S. Rep. No. 96-640, 96th Cong., 2d Sess. 70 (1980).) This requirement most immediately applies to negotiable order of withdrawal (NOW accounts) that may be offered by depository institutions outside of New England,<sup>1</sup> New York, and New Jersey, beginning December 31, 1980, under section 303 of the Consumer Checking Account Equity Act of 1980 (Title III of Pub. L. 96-221). On August 15, 1980, the Board announced a revised Regulation D—Reserve Requirements of Depository Institutions to implement the Monetary Control Act. Under that action, reserve requirements on negotiable order of withdrawal (NOW accounts) maintained by member banks in the District of Columbia and the 42 States outside of New England, New York and New Jersey will not be subject to the reserve requirement phase-in provisions of the Monetary Control Act in accordance with the intent of the Monetary Control Act. In order to make this action effective, the Board has amended Regulation D, effective August 28, 1980, the beginning of the last reserve computation period prior to the effective date of the Monetary Control Act, to impose a 12 per cent reserve requirement of NOW accounts of member banks located in the District of Columbia and the 42 States outside of New England, New York and New Jersey.

This revision to current Regulation D will not impose any additional reserve requirements on member banks at this

time since NOW accounts are not permitted under Federal law outside of New England, New York, and New Jersey until December 31, 1980. NOW accounts maintained at member banks in the eight States where they are currently authorized will continue to be subject to a reserve requirement ratio of 3 per cent until November 13, 1980, when such member banks will commence phasing into the new reserve ratios on transaction accounts of Regulation D (12 CFR Part 204).

This amendment is technical in nature and relates to a regulatory provision that becomes effective November 13, 1980. Public comment on this issue was solicited on this issue on June 4, 1980 (45 FR 38388).

Effective August 28, 1980, pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.* § 204.5 of Regulation D (12 CFR 204.5) is amended as follows:

Section 204.5(a) (1)(ii) and (2)(ii) are revised to read as follows:

**§ 204.5 Reserve requirements.**

(a) \* \* \*

(1) \* \* \*

(ii) 1 per cent of its time deposits outstanding on or issued after October 16, 1975, that have an initial maturity of four years or more; 2½ per cent of its time deposits outstanding on or issued after December 25, 1975, that have an initial maturity of 180 days or more but less than four years; 3 per cent of its time deposits up to \$5 million, outstanding on or issued after October 16, 1975, that have an initial maturity of less than 180 days, plus 6 per cent of such deposits in excess of \$5 million; for a member bank located outside of the States of Massachusetts, New Hampshire, Connecticut, Maine, New Jersey, New York, Rhode Island, and Vermont, 12 per cent of its savings accounts subject to negotiable orders of withdrawal: *Provided, however*, that in no event shall the reserves required on its aggregate amount of time and savings deposits be less than 3 per cent or more than 10 per cent.

\* \* \* \* \*

(2) \* \* \*

(ii) 1 per cent of its time deposits outstanding on or issued after October 16, 1975, that have an initial maturity of four years or more; 2½ per cent of its time deposits outstanding on or issued after December 25, 1975, that have an initial maturity of 180 days or more but less than four years; 3 per cent of its time deposits up to \$5 million, outstanding on or issued after October 16, 1975, that have an initial maturity of less than 180 days, plus 6 per cent of such deposits in excess of \$5 million; for

a member bank located outside of the States of Massachusetts, New Hampshire, Connecticut, Maine, New Jersey, New York, Rhode Island, and Vermont, 12 per cent of its savings accounts subject to negotiable orders of withdrawal: *Provided, however*, that in no event shall the reserves required on its aggregate amount of time and savings deposits be less than 3 per cent or more than 10 per cent.

\* \* \* \* \*

By order of the Board of Governors, August 28, 1980.

Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 80-27294 Filed 9-4-80; 8:45 am]

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## CIVIL AERONAUTICS BOARD

### 14 CFR Part 223

[Regulation ER-1197; Economic Regulations Amendment No. 10 to Part 223]

### Free and Reduced-Rate Transportation; Notice of Approval by the General Accounting Office

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Final rule.

**SUMMARY:** This final rule gives notice that the General Accounting Office has approved the reporting requirements and the application requirement contained in Part 223 of the Board's Economic Regulations governing free and reduced-rate transportation. This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated August 25, 1980.

**DATES:** Adopted: September 2, 1980.  
Effective: September 2, 1980.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-6042.  
Accordingly, the Civil Aeronautics Board amends Part 223 of its Economic Regulations (14 CFR 223) by revising the note at the end of Part 223 to read:

**Note.**—The reporting requirements contained in sections 223.2(c), 223.6, 223.7 and the application requirement contained in section 223.8 have been approved by the U.S. General Accounting Office under B-180228 (R0069).

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

<sup>1</sup> Massachusetts, New Hampshire, Connecticut, Maine, Rhode Island, and Vermont.

By the Civil Aeronautics Board.  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 80-27221 Filed 9-4-80; 8:45 am]

BILLING CODE 6320-01-M

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240 and 249

[Release Nos. 33-6230; 34-17095]

### Amendments Regarding Exhibit Requirements

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission announces the adoption of amendments to Regulation S-K [17 CFR 229.20] and certain frequently used forms under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] in order to standardize and improve the Commission's requirements relating to the filing of exhibits. The amendments delete thirteen exhibits formerly required to be filed, revise and make uniform the requirements relating to certain other exhibits, and, with the exception of the exhibit requirements for Form S-18, consolidate all of the amended exhibit requirements of the frequently used forms into a new Regulation S-K item. To facilitate the identification and location of exhibits by the public, the Commission is also adopting amendments to certain rules to require an exhibit index with each form or report filed and a statement on the first page of each such document indicating the page on which the exhibit index can be found.

**EFFECTIVE DATE:** October 6, 1980. While the amendments will not be effective until such date, in view of the cost and other savings the amendments may provide to registrants, the Commission will accept filings complying with the amendments beginning immediately for those wishing to utilize them.

**FOR FURTHER INFORMATION CONTACT:** Prior to effectiveness contact Joseph G. Connolly, Jr. at (202) 272-3097. After effectiveness contact William E. Toomey, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573).

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission

today announced certain amendments to the exhibit filing requirements currently set forth in certain registration and reporting forms under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), the amendment of certain related rules under these Acts, and the adoption of a new item relating to exhibits in Regulation S-K.

### I. Background

As a result of a reexamination by the Division of Corporation Finance of the exhibit filing requirements for the registration and reporting forms promulgated under both the Securities Act and the Exchange Act, the Commission published proposed amendments to Regulation S-K and certain forms and rules under both Acts to standardize and improve the Commission's requirements relating to the filing of exhibits.<sup>1</sup> These changes were proposed for the dual purpose of making the requirements more relevant to investors and of reducing the burdens which they impose on registrants. A significant concomitant effect would also be to lessen the volume of paper filed with the Commission. Generally, the proposing release requested comments on the propriety of: (1) eliminating, modifying and, in limited circumstances, adding certain exhibit requirements in light of existing disclosure obligations; (2) deleting the specific exhibit requirements from certain frequently used forms; (3) adding a new item to Regulation S-K to consolidate all exhibit requirements for such selected frequently used forms.<sup>2</sup>

<sup>1</sup> Release No. 33-6149 (November 16, 1979) [44 FR 67143].

<sup>2</sup> As noted in the proposing release, the Commission has determined to confine the amendments to only those forms under the Securities Act and the Exchange Act which are most frequently used. The frequently used forms selected are Forms S-1 [17 CFR 239.11], S-2 [17 CFR 239.12], S-7 [17 CFR 239.26], S-8 [17 CFR 239.16b], S-11 [17 CFR 239.18], S-14 [17 CFR 239.23], S-16 [17 CFR 239.27], and S-18 [17 CFR 239.28] under the Securities Act and Forms 10 [17 CFR 249.210], 8-K [17 CFR 249.308], 10-Q [17 CFR 249.308a], and 10-K [17 CFR 249.310] under the Exchange Act. Although the Form 11-K [17 CFR 249.31] had originally been included in the proposed Regulation S-K item, in view of the limited number and type of exhibits required by the Form 11-K [17 CFR 249.31], the Commission has determined not to include this form in Item 7 of Regulation S-K.

<sup>3</sup> With respect to the Form S-18, the Commission has determined to adopt all the substantive changes to the exhibit requirements outlined in this release but, instead of inserting a reference to Regulation S-K in the Form S-18, the substantive changes are directly incorporated into the "Instructions as to Exhibits" section of that Form. The basis for this distinction is the view that Form S-18 represents a "simplified" registration form and as such the Commission believes that it is appropriate to avoid cross references to other regulations wherever possible.

and (4) amending certain rules under both the Securities Act and the Exchange Act to require an exhibit index with all registration and reporting forms filed under such Acts, as well as a statement on the first page of each such form indicating the page on which the exhibit index may be found.

Twenty-one commentators addressed various aspects of the proposed amendments. The commentators expressed unanimous support for the proposed elimination of the thirteen exhibits listed in that release, commending the Commission for alleviating certain burdensome and outdated requirements upon registrants. The commentators also expressed in varying degrees their support for the Commission's attempt to achieve uniformity in the exhibit requirements for the forms selected and the relocation of the exhibit requirements for such forms in a single item of Regulation S-K. As a result of the views expressed by the commentators, a number of revisions have been incorporated into the proposals as adopted.

### II. Synopsis of Amendments

The following synopsis discusses the exhibits which have been eliminated, modified and added to the filing requirements as well as the new exhibit item in Regulation S-K and the amendments to other rules. Attention is directed to the text of the amendments for a more complete understanding.

#### A. Elimination, Modification and Addition of Exhibits

##### 1. Elimination of Exhibits

As noted above, there was unanimous support of the commentators for the proposed elimination of the thirteen exhibits set forth below. The Commission believes that these exhibits are of limited interest to both the public and the Commission and may be eliminated without impairing investor information or protection.

The Commission has determined to no longer require the following exhibits, in those forms indicated in parentheses:

- (1) Syndication agreements (S-1, S-2, S-7, S-11, S-14, S-16 and S-18);
- (2) Selling group agreements (S-1, S-2, S-7, S-11, S-14, S-16 and S-18);
- (3) Specimen certificates (S-1, S-2, S-7, S-11, S-14, S-16, S-18, Form 10 and Form 20);
- (4) Plans relating to options, warrants and rights to the extent they are not deemed to be material contracts (S-1, S-8, S-11, S-14, S-18, Form 10 and Form 10-K);

- (5) Pension, retirement and deferred compensation plans (S-1 and S-18);

(6) Indemnification contracts or arrangements (S-1, S-7, S-11 and S-14);

(7) Profit sharing or bonus plans to the extent they are not deemed to be material contracts (S-8, S-11, S-14, S-18 and Form 10);

(8) Agreements relating to registration rights (S-14);

(9) Summaries of the employee benefit plan to which the filing relates and any related written communications (S-8 and S-18);

(10) Waivers or undertakings required by Rule 460 [17 CFR 230.460] (S-8);

(11) List of subsidiaries participating in the plan (S-8);

(12) Form of proxy (S-14); \* and

(13) Text of any proposal or any published report regarding matters submitted to a vote of security holders (Form 10-K and Form 10-Q).

## 2. Modification of Exhibits Requirements

(a) *Applicability of Requirements to Various Forms.* One of the commentators' general observations on the proposals was that the proposed revisions and codification into Regulation S-K of the exhibit filing requirements did not reflect adequately the distinctions among the various forms, particularly the Form S-16.

The Commission has determined that certain exhibit requirements are unnecessary for Form S-16 and can be eliminated without impairing investor information or protection. This determination is based upon the fact that the Form S-16 incorporates by reference current as well as subsequently filed reports under the Exchange Act where such exhibits may be found.<sup>4</sup> In this manner, information filed as an exhibit pursuant to the continuous disclosure requirements of the Exchange Act will be relied upon in lieu of an exhibit filing. This revision is intended to eliminate unnecessary and duplicative filings without reducing the quality of the information available to investors. As revised, only documents which relate specifically to the securities offering will be required as exhibits to Form S-16, i.e. underwriting agreements, plans of acquisition,

reorganization, arrangement, liquidation or succession, instruments defining the rights of holders of the debt or equity securities being registered and opinions of counsel relating to legality and tax matters.

(b) *Modification of Specific Exhibits.* As discussed in Release No. 33-6149, the Commission proposed substantive revisions to two existing exhibit requirements: material contracts and previously unfiled documents. In response to the comments received, these definitions have been revised, as well as the proposed definitions of certain other exhibits, namely (a) instruments defining the rights of security holders, (b) letter with respect to changes in accounting principles, (c) plans of acquisition, reorganization, arrangement, liquidation or succession and (d) articles of incorporation and by-laws.

(i) *Material contracts.*—The material contract definition has been revised from the proposal in two respects. First, in paragraph (b) of the definition relating to contracts not made in the ordinary course of business, the percentage in subpart 3 concerning the acquisition or sale of certain assets has been revised to the 15% threshold currently in the definition of material contracts in Form S-1. After analyzing the commentators' views in this area, the Commission has determined to set the percentage at 15% rather than reduce it to the Form 10 10% standard. This approach is consistent with the purpose of reducing the burdens which the exhibit filing requirements impose upon registrants without materially impairing investor information or protection.

Second, a new subpart has been added to paragraph (c) of the definition which specifically excludes from the exhibit filing requirements any remuneration plan or arrangement in which directors or executive officers of the registrant do not participate. The Commission believes that these types of plans generally are not material to investor information or protection and are not necessary for staff review purposes.

In certain respects, particularly with regard to the current exhibit requirements of Form S-7, the definition of material contract adopted will require the filing or at least the listing of some additional documents not currently required. The Commission does not believe, however, that this item requirement imposes an unreasonable burden upon registrants. It should be noted that Form S-7 allows the integration into the registration statement of the Exchange Act reports. To the extent such contracts have been

filed with these reports, the registrant may incorporate them by reference so that the requirement in most instances will be a reference requirement rather than the imposition of a new filing requirement.

The Commission has determined, however, to eliminate this specific exhibit from the filing requirements for the Form S-16. Unlike the other registration and reporting forms, the Form S-16 incorporates by reference into the registration statement current, as well as subsequently filed, Exchange Act periodic reports where such contracts will be filed. As a result, the Commission believes that the elimination of this exhibit requirement will not reduce the quality of information available to investors but rather will eliminate a duplicative filing and reference requirement.

(ii) *Previously unfiled documents.*—Although the substance of this exhibit requirement remains as originally proposed, the definition of this exhibit has been redrafted to remove certain ambiguities perceived by commentators, including eliminating the possible interpretation that the item would require a continual updating of all Securities Act exhibits not otherwise required to be filed with the Forms adopted under the Exchange Act. As adopted, the exhibit requires the filing of all contracts or other documents either originally required to be filed with a registration statement on Form 10 or a report on Forms 10-K or 10-Q, as well as any document which later comes into existence and is of a character originally required to be so filed. Further, all amendments or modifications of previously filed exhibits are also encompassed within the item requirement. As noted in the proposing release, this item is a consolidation of several existing exhibit requirements in Forms 10-Q and 10-K and in the Commission's view does not impose any new filing requirements upon registrants except that the revised requirement would be operative on a quarterly basis, rather than on the annual basis used in the past.

(iii) *Instruments defining the rights of security holders, including indentures.*—The substance, as well as the applicability, of this definition has been revised in a number of respects from the original proposal. Substantively, the definition has been revised by increasing the exclusionary provision in subpart (b), relating to non-registered long-term debt, from 5% to 10%.

Similarly, the applicability of the item to the various forms has been revised by limiting in certain respects the specific filing requirements. As adopted, the

<sup>4</sup> Although the form of proxy will no longer be required to be filed as an exhibit to the S-14 registration statement, the requirement that it be filed with the Commission with both the preliminary and definitive proxy material would be retained.

<sup>5</sup> Material changes in the registrant's affairs not previously disclosed in an incorporated document would be required to be disclosed in the registration statement pursuant to Item 8 of the Form. As a result, a material contract not previously filed as an exhibit to an Exchange Act periodic report would be required to be disclosed in the filing, although not required to be filed as an exhibit to the registration statement.

definition requires the filing of all instruments defining the rights of holders of the equity or debt securities being registered. Further, the definition requires the filing of all other instruments defining the rights of holders of long-term debt of the registrant, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, only on Forms S-1, S-2, S-11 and S-14 under the Securities Act and Forms 10 and 10-K under the Exchange Act. The original proposal would have required the filing of all such instruments with each Securities Act and Exchange Act form. In light of the nature of Forms S-7, S-8 and S-16 under the Securities Act, however, the Commission has determined that this requirement is unnecessary. Forms S-7 and S-16 are simplified registration forms which are premised upon Exchange Act filings where such instruments are already filed while the Form S-8 is the registration form relating solely to the registration of securities to be offered to employees of the registrant pursuant to certain employee benefit plans.

With regard to Forms 8-K and 10-Q under the Exchange Act, the definition of this item requirement has been revised to call for such exhibits only when the periodic report filed discloses a modification of existing rights, the issuance of any additional securities of a class outstanding or the creation of a new class of securities or indebtedness. Each Form 10-K, however, will require as exhibits all instruments defining the rights of holders of long-term debt. To the extent such instruments have been previously filed with the Commission, the registrant may incorporate them by reference. In this manner an interested investor or the staff of the Commission will be able to obtain a listing of all such instruments by consulting the registrant's latest Form 10-K and any subsequently filed Form 10-Q's.

(iv) *Letter with respect to changes in accounting principles.*—The Commission has revised this definition by adding the qualifying "under the circumstances" phrase currently appearing in the requirement for this exhibit. This language had been inadvertently omitted from the definition when proposed.

(v) *Plan of acquisition, reorganization, arrangement, liquidation or succession.*—This definition has been revised by the addition of a sentence relating to the requirements for filing any schedules (or similar attachments) to these plans. Currently, all such schedules are required to be filed with

the disclosure document. It has been the Commission's experience, however, that many of the schedules being received by the staff are not material for investor information or protection and are unnecessary for Commission review purposes. Accordingly, the definition as adopted limits the applicability of the exhibit filing requirements to these schedules which are material to an investment decision and which are not otherwise disclosed in the plan itself or the disclosure document. This provision has been qualified by the requirement that the plan or agreement filed as the exhibit contain a list briefly identifying the contents of all omitted schedules together with the registrant's agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(vi) *Articles of Incorporation and by-laws.*—The definition of this exhibit has been revised in one respect from the proposal. A provision has been added to the item which requires that, whenever an amendment to the articles or by-laws of the registrant is filed as an exhibit to a reporting form, a complete copy of the registrant's articles or by-laws as amended must also be filed as an exhibit. The Commission believes that this revision will assist interested investors, as well as members of the staff of the Commission, in identifying and locating the registrant's complete charter or by-laws which at present is particularly difficult under the Commission's existing micrographic document storage system. Although the Commission recognizes that this revision may impose some additional burdens upon registrants, it believes that these burdens will be minimal and that significant benefits to the public will result.

### 3. Additional Exhibits

As noted in the proposing release, the Commission became aware during the reexamination of the exhibit filing requirements that the exhibits called for by certain related forms were inconsistent in the sense that certain items are required in some forms but not in others, even though such forms pertain to similar disclosure issues. To cure this inconsistency, the Commission is adopting the requirement that the following documents be filed as exhibits to the forms listed in parentheses: (1) instruments defining the rights of security holders, including indentures, (S-2); (2) opinion with respect to tax matters (S-1, S-2, S-7, S-14, S-16 and S-18); (3) voting trust agreements (S-2); (4) plans of acquisition, reorganization, arrangement, liquidation or succession (S-7 and S-16); and opinions of counsel

with respect to liquidation preference and this discount on capital shares (S-2 and S-7).

Certain commentators believed that the additional requirement for an opinion of counsel relating to tax matters may be burdensome, costly and, in some instances, difficult to satisfy. In light of these views, the Commission has modified materially the filing requirement for such opinions. As adopted, an opinion of counsel will be mandated only for filings on Form S-11 or filings in which Guide 60 of the Guides for the Preparation of Registration Statements<sup>6</sup> applies. The Commission notes that tax opinions are currently required in these filings and in light of the type of securities being registered and the business activities of the registrant continues to believe in their importance to investors. For all other filings, including Forms S-2, S-7 and S-16, an opinion of counsel as to tax matters will be required only where the tax consequences are material to an investor and a representation as to the tax consequences is set forth in the filing. This requirement may be satisfied, however, by the inclusion of the full opinion in the registration statement.

A new exhibit requirement relating to the use of SAS No. 24<sup>7</sup> reports in registration statements has also been included in Table I of the exhibit item. Under this exhibit requirement, which is captioned "Letter re unaudited financial information," registrants must file as an exhibit to a registration statement a letter from the independent accountants which acknowledges the accountants' awareness of the use in the registration statement of any of their reports which are not subject to the consent requirement of section 7 of the Securities Act. The intention of the Commission to adopt this exhibit requirement was announced in Securities Act Release No. 6173 (December 28, 1979) [41 FR 43398]. That Release announced the adoption of a rule excluding from the definition of a "report," for the purposes of sections 7 and 11 of the Securities Act, SAS No. 24, reports by independent accountants on reviews of unaudited interim financial information. While this amendment to Rule 436 (17 CFR 230.436) eliminated the requirement of section 7 of the Securities Act that accountants consent to the use of SAS No. 24 reports, the Commission noted in the Release that the independent accountants should

<sup>6</sup> Securities Act Release No. 5745 [41 FR 43398].

<sup>7</sup> Statement on Auditing Standards No. 24, "Review of Interim Financial Information," AICPA, March 1979.

acknowledge their awareness that these reports are being included in a registration statement. As adopted, this exhibit will be required for all the Securities Act forms in Table I except Form S-2.

#### B. Revision of Forms and Inclusion of Exhibit Item in Regulation S-K

In the interest of clarity, and to establish uniformity between the exhibit requirements for the most frequently used forms under both the Securities Act and the Exchange Act, the Commission has adopted, as proposed, two major changes in the manner in which such requirements are set forth. First, with the exception of the Form S-18, the specific exhibit requirements are no longer contained in the selected frequently used forms. In lieu thereof, a single reference appears to Regulation S-K. Second, the Commission has adopted Item 7 of Regulation S-K which contains all the exhibit requirements for the relevant forms being amended.<sup>8</sup> The Commission believes that these changes will assist registrants in complying with the exhibit requirements by simplifying and consolidating requirements.

New Item 7 consists of two parts: first, two tables (one each for the Securities and the Exchange Acts) list each of the forms being covered by the item and the exhibits required to be filed with each such form; second, a definitional section containing a narrative description of each exhibit listed in the table.

In response to a number of comments, certain revisions have been incorporated into Item 7. In paragraph (a) of the item, the reference to the exhibit index and sequential numbering requirement has been revised to require sequential pagination in only the manually signed original. This reference had been inadvertently omitted from the item when proposed.

Instruction number 2 to Item 7(a) has also been expanded to indicate that an "X" designation in the exhibit table indicates the documents which are required to be filed with each form even if previously filed with an earlier report.<sup>9</sup> Accordingly, the filing of certain previously filed exhibits is required in a number of documents. For example, in Table II, the Form 10-K requires the filing of all exhibits relating to the articles of incorporation and by-laws, instruments defining the rights of

holders of long-term debt and material contracts, in addition to any previously unfiled documents. As noted in paragraph (a) of the Item, incorporation by reference is permitted and, if utilized, the Commission believes this requirement will, in many cases, result in a listing of previously filed exhibits, rather than the imposition of a requirement that the exhibits be physically filed each year.

The tables, as adopted, have also been modified in several respects to incorporate a number of the commentators' concerns. A number of footnotes have been added to the various requirements of the Item which limit, in certain respects, the specific exhibit filing requirements. In many respects, these footnotes clarify the Commission's intent in publishing the proposal. The requirement in Form S-16 for filing material contracts has been deleted. The requirements for the filing of opinions regarding liquidation preference and discount on capital shares have been added to Forms S-2 and S-7 while the opinion of counsel relating to tax matters has been added to Forms S-2, S-7 and S-16. Further, in view of the limited number and type of exhibits required by the Form 11-K, this form has been eliminated from the Regulation S-K Item requirements.

#### C. Amendments to Certain Related Rules

In connection with the amendment to Regulation S-K, the Commission has also adopted amendments to Rule 403 [17 CFR 230.403] under the Securities Act and Rule 0-3 [17 CFR 240.0-3] under the Exchange Act. Both rules set forth requirements relating to the filing of documents with the Commission. Each such rule has been amended to add a new paragraph thereto requiring that the following be included with each registration statement or report being filed: (1) and index listing each exhibit filed with the registration statement or report and, in the manually signed original, the page under the Commission's sequential numbering system where such exhibit can be found and (2) a statement on the cover page of the manually signed filing indicating the page under the sequential numbering system on which the exhibit index is located.

The purpose of the rule changes is to assist readers of the filings in identifying and locating exhibits. Under the current micrographic system used by the Commission to store documents, it is difficult to determine without a complete review of the document which exhibits are filed with a particular registration statement or report.

The Commission believes that these changes will substantially ease the difficulties in identification and location inherent in the present micrographic system and will greatly facilitate the retrieval of such information for the investing public.

#### D. Text of the Amendments

### PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. 17 CFR 229.20 is amended by adding a new Item 7 to Regulation S-K.

#### § 229.20 Information required in document.

Item 7. Exhibits. (a) Subject to Rule 447 (17 CFR 230.447) under the Securities Act of 1933 and Rule 12b-32 (17 CFR 240.12b-32) under the Securities Exchange Act of 1934 regarding incorporation of exhibits by reference, the following exhibits shall be filed, where applicable, as part of the registration statement or report. For convenient reference, each exhibit should be listed in the exhibit index according to the number assigned to it in the applicable table set forth below. The exhibit index should immediately precede the exhibits filed with such document and should indicate in the manually signed original the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact should be noted in the exhibit index referred to in the preceding sentence. For a description of each of the exhibits included in the following tables, see paragraph (b) of this Item.

This Item applies only to the forms specified below. With regard to forms not listed in the tables, reference should be made to the appropriate form for the specific exhibit filing requirements applicable thereto.

#### Tables

##### Instructions

(1) Each table indicates those documents which must be filed as exhibits to the respective forms listed. Only copies, rather than originals, need be filed of each document listed;

(2) The "X" designation indicates the documents which are required to be filed with each form even if previously filed with another document, *Provided, however*, That such previously filed documents may be incorporated by reference to satisfy the filing requirements; and

(3) The number used in the far left column of each table refers to the appropriate

<sup>8</sup> As originally proposed the exhibit requirement Item of Regulation S-K would have been designated Item 8.

<sup>9</sup> Previously filed documents, however, may be incorporated by reference pursuant to Rule 447 under the Securities Act [17 CFR 230.447] and Rule 12b-32 [17 CFR 240.12b-32] under the Exchange Act to satisfy these requirements.

subsection in paragraph (b) where a description of the exhibit can be found.

Whenever necessary, alphabetical or numerical subparts may be used.

Table I.—Securities Act of 1933—Frequently Used Forms

	S-1	S-2	S-7	S-8	S-11	S-14	S-16
(1) Underwriting agreement.....	X	X	X		X	X	X
(2) Plan of acquisition, reorganization arrangement, liquidation or succession.....	X		X		X	X	X
(3) Articles of incorporation and by-laws.....	X	X			X	X	
(4) Instruments defining the rights of security holders, including indentures.....	X	X	X	X	X	X	X
(5) Opinion re legality.....	X	X	X	X	X	X	X
(6) Opinion re discount on capital shares.....	X	X	X		X	X	
(7) Opinion re liquidation preference.....	X	X	X		X	X	
(8) Opinion re tax matters.....	X	X	X	X	X	X	X
(9) Voting trust agreement.....	X	X			X	X	
(10) Material contracts.....	X	X	X		X	X	
(11) Statement re computation of per share earnings.....	X		X		X	X	
(12) Statements re computation of ratios <sup>1</sup> .....	X		X		X	X	
(13) Annual report to security holders.....				X			
(14) Material foreign patents.....	X	X				X	
(15) Instruments defining the rights of participating employees.....	X			X			
(16) Letter re unaudited financial information.....	X	X	X	X	X	X	X

<sup>1</sup> Such plans need not be filed for secondary offerings on this form.

<sup>2</sup> Such statements are necessary only when such ratios are furnished.

<sup>3</sup> This exhibit need be filed only for the registration of securities offered pursuant to an employee benefit plan of the registrant.

Table II.—Securities Exchange Act of 1934—Frequently Used Forms

	Form 10	8-K	10-Q	10-K
(2) Plan of acquisition, reorganization arrangement, liquidation or succession.....	X	X		
(3) Articles of incorporation and by-laws.....	X			X
(4) Instruments defining the rights of security holders, including indentures.....	X	X	X	X
(5) Opinion re discount on capital shares.....	X			
(6) Opinion re liquidation preference.....	X			
(7) Voting trust agreement.....	X			
(10) Material contracts.....	X			X
(11) Statement re computation of per share earnings.....	X		X	X
(12) Statements re computation of ratios <sup>1</sup> .....	X			X
(13) Annual report to security holders.....				X
(14) Material foreign patents.....	X			
(17) Letter re change in certifying accountant.....		X		
(18) Letter re director resignation.....		X		
(19) Letter re change in accounting principles.....			X	X
(20) Previously unfilled documents.....			X	X
(21) Financial statements furnished to security holders.....			X	

<sup>1</sup> Such statements are necessary only when such ratios are furnished.

(b) *Description of Exhibits.* Set forth below is a description of each document listed in the foregoing tables for which copies should be filed, where appropriate.

(1) *Underwriting agreement.*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Plan of acquisition, reorganization, arrangement, liquidation, or succession.*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain

information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3) *Articles of incorporation and by-laws.*—The articles of incorporation and by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the registrant are filed, there shall also be filed a complete copy of the articles or by-laws as amended.

(4) *Instruments defining the rights of security holders, including indentures.*—

(a) All instruments defining the rights of holders of the equity or debt securities being registered.

(b) Except as set forth in (c) below, for filings on Forms S-1, S-2, S-11 and S-14 under the Securities Act of 1933 and Forms 10 and 10-K under the Securities Exchange Act of 1934 all instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(c) Where the instrument defines the rights of holders of long-term debt of the registrant and all its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(d) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents; and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(e) With respect to Forms 8-K and 10-Q under the Securities Exchange Act of 1934 which are filed and which disclose the creation of a new class of securities or indebtedness or the issuance or reissuance of any additional securities or indebtedness of a class outstanding, or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness.

(5) *Opinion re legality.*—(a) An opinion of counsel, as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-

assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; or (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 410 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of that Act pertaining to such provisions.

(6) *Opinion re discount on capital shares*—If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

(7) *Opinion re liquidation preference*—If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(8) *Opinion re tax matters*—For filings on Form S-11 under the Securities Act of 1933 or those to which Guide 60 of the Guides for the Preparation of Registration Statements (Securities Act Release 5745; 41 FR 43398) applies an opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable

registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(10) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of the assets of the registrant on a consolidated basis; or

(4) Any lease under which a significant part of the property described in the registration statement or report is held by the registrant.

(c) Any management contract or any remunerative plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement in which directors or executive officers of the registrant do not participate. See Item 4 of Regulation S-K for the definition of the term "executive officer."

(5) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(11) *Statement re computation of per share earnings*—A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. (See Securities Act Release No. 5133 (February 18, 1971) [36 FR 4483]).

(12) *Statement re computation of ratios*—A statement setting forth in reasonable detail the computation of ratios of earnings to fixed charges which appears in the registration statement or report.

(13) *Annual report to security holders*—The registrant's annual report to security holders for its last fiscal year if all or a portion thereof are incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy.

(14) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring,

developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(15) *Instruments defining the rights of participating employees*—All constituent instruments (other than the plan itself) defining the rights of employees who participate in the plan.

(16) *Letter re unaudited financial information*—A letter, where applicable, from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which pursuant to Rule 436(c) (17 CFR 230.436(c)) under the Securities Act are not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act.

(17) *Letter re change in certifying accountant*—A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(18) *Letter re director resignation*—Any letter from a former director which sets forth a description of a disagreement with the registrant that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(19) *Letter re change in accounting principles*—Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board requiring such a change.

(20) *Previously unfiled documents*—All contracts and other documents of a type required to be filed as an exhibit to an original registration statement on Form 10 or a report on Forms 10-K and 10-Q under the Securities Exchange Act of 1934 which were executed or in effect during the reporting period and not previously filed, as well as all amendments or modifications, not previously filed, to all exhibits

previously filed with Forms 10, 10-K and 10-Q.

(21) *Financial statements furnished to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, the information called for may be incorporated by reference to such published statement provided copies thereof are included as an exhibit to Part I of the report filed.

#### **PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

2. 17 CFR 230.403 is amended by adding a new paragraph (e):

**§ 230.403 Requirements as to paper, printing and language.**

(e) Each registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (d) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

#### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

3. 17 CFR 240.0-3 is amended by adding a new paragraph (c):

**§ 240.0-3 Filing of material with the Commission.**

(c) Each document filed shall contain an exhibit index, which should immediately precede the exhibits filed with such document. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (b) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed document shall list the page in the filing where the exhibit index is located.

#### **PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

4. 17 CFR Part 239 is amended as follows:

a. *Form S-1*. Item 30 and the Instructions as to Exhibits of Form S-1 are amended as follows:

**§ 239.11 Form S-1, registration statement under the Securities Act of 1933.**

Item 30. Financial statements and exhibits.

(a) \* \* \*

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

##### **Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

b. *Form S-2*. Item 18 and the Instructions as to Exhibits of Form S-2 are amended as follows:

**§ 239.12 Form S-2, for shares of certain corporations in the development stage.**

Item 18. Exhibits File. Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

##### **Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

c. *Form S-7*. Item 17 and the Instructions as to Exhibits of Form S-7 are amended as follows:

**§ 239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.**

Item 17. Other Documents Filed as a Part of the Registration Statement.

(a) \* \* \*

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

##### **Instructions as to Exhibits**

The exhibits, shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

d. *Form S-8*. Instructions as to Exhibits of Form S-8 are amended as follows:

**§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.**

**Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

e. *Form S-11*. Item 32 and the Instructions as to Exhibits of Form S-11 are amended as follows:

§ 239.18 *Form S-11*, for registration under the Securities Act of 1933 of securities of certain real estate companies.

Item 32. Financial Statements and Exhibits

(a) \*\*\*

(b) The exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.30.

**Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

f. *Form S-14*. Item 5 and the Instructions as to Exhibits of Form S-14 are amended as follows:

§ 239.23 *Form S-14*, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145].

Item 5. Exhibits Filed. Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

**Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

g. *Form S-16*. Item 13 and the Instructions as to Exhibits of Form S-16 are amended as follows:

§ 239.27 *Form S-16*, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

Item 13. List of Exhibits. Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

**Instructions as to Exhibits**

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

h. *Form S-18*. Instructions as to Exhibits of Form S-18 are amended as follows:

§ 239.28 *Form S-18*, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed \$5,000,000.

**Instructions as to Exhibits**

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for by Item 20.

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Articles of incorporation and by-laws*—The articles of incorporation and by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders, including indentures*—(a) All instruments defining the rights of holders of the equity or debt securities being registered as well as all instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) Where the instrument defines the rights of holders of long-term debt of the registrant and all its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(c) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents; and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(4) *Opinion re legality*—(a) An opinion of counsel, as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of that Act pertaining to such provisions.

(5) *Opinion re discount on capital shares*—If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(6) *Opinion re liquidation preference*—If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(7) *Opinion re tax matters*—An opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service supporting the Tax matters and consequences as to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinion may be conditioned or may be qualified so long as such conditions and qualifications are adequately described in the filing.

(8) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(9) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will

be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of all the assets of the registrant on a consolidated basis; or

(4) Any lease under which a significant part of the property described in the registration statement or report is held by the registrant.

(c) Any management contract or any remunerative plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement in which directors or executive officers of the registrant do not participate. See Item 4 of Regulation S-K for the definition of the term "executive officer."

(5) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(10) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(11) *Instruments defining the rights of participating employees*—All constituent instruments (other than the plan itself) defining the rights of employees who participate in the plan.

(12) *Letter re unaudited financial information*—A letter, where applicable, from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which pursuant to Rule 436(c) (17 CFR 230.436(c)) under the Securities Act are not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. 17 CFR Part 249 is amended as follows:

a. *Form 10*. Item 16 and the Instructions as to Exhibits of Form 10 are amended as follows:

§ 249.210 *Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.*

Item 16. Financial Statements and Exhibits

(a) \* \* \*

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

### Instructions as to Exhibits

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

b. *Form 8-K*. Item 7 of the Form 8-K is amended as follows:

§ 249.308 *Form 8-K, for current reports.*

Item 7. Financial statements

(a) \* \* \*

(b) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

c. *Form 10-Q*. Instruction 9 and Item 9 of Form 10-Q are amended as follows:

§ 249.308a *Form 10-Q, for quarterly reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.*

Instruction 9. Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

Item 9. Exhibits and Reports on Form 8-K. (a) The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

d. *Form 10-K*. Item 12 and the Instructions to Exhibits of Form 10-K are amended as follows:

§ 249.310 *Form 10-K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.*

Item 12. Financial Statements, Exhibits Filed and Reports on Form 8-K.

(a) \* \* \*

(2) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

### Instructions as to Exhibits

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

### Certain Findings

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact which the amendments would have on competition and has concluded that it imposes no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefit of this rule to investors and registrants.

The Commission also finds that any changes in the amended rule and forms adopted from those published in Securities Act Release No. 6149 have already been generally subject to comment so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

### Authority

The amendments to Rule 403 and the enumerated forms prescribed under the Securities Act of 1933 are being adopted pursuant to the authority in Sections 6, 7, 8, 10, and 19(a) of that Act. The amendments to Rule 0-3 and the enumerated forms prescribed under the Securities Exchange Act of 1934 are being adopted pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S-K are being adopted pursuant to all of the 1933 and 1934 Act provisions referred to above.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; Secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; Secs. 205, 209, 48 Stat. 906, 908; Secs. 1, 3, 8, 203(a), 49 Stat. 704, 1375, 1377, 1379; Sec. 2, 52 Stat. 1075; Sec. 301, 54 Stat. 657; Secs. 8, 202, 68 Stat. 685, 686; Secs. 3, 4, 6, 10, 78 Stat. 88(a), 565, 569, 570; Sec. 1, 79 Stat. 1051; Secs. 1, 2, 82 Stat. 454; Secs. 1, 2, 7, 28, 84 Stat. 1435, 1497, 1653; Secs. 10, 11, 18, 89 Stat. 119, 121, 155; Sec. 308, 90 Stat. 57; Sec. 204, 91 Stat. 1500; 15 U.S.C. 77f, 77g, 77h, 77i, 77j(a), 78l, 78m, 78o(d), 78w(a))

By the Commission.  
George A. Fitzsimmons,  
Secretary.

August 27, 1980.

[FR Doc. 80-27123 Filed 9-4-80; 8:45 am]

BILLING CODE 8010-01-M

## 17 CFR Part 249

[Release No. 34-17100]

### Registration of Municipal Securities Dealers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final amendments to form.

**SUMMARY:** The Commission is amending Form MSD, the registration form used by municipal securities dealers which are banks or separately identifiable departments or divisions of banks. The amendments (1) conform a definition in Form MSD to a definition contained in a rule of the Municipal Securities Rulemaking Board, (2) allow, under certain circumstances, bank municipal securities dealers to substitute, for forms currently required to be filed with the Commission, forms containing similar information with respect to supervisory personnel currently filed with the bank regulatory agencies, and (3) make certain technical changes in Form MSD. Banks or separately identifiable departments or divisions of banks whose municipal securities dealer registration is either currently effective or pending will be required to update their registrations or applications on Form MSD if such registrations or applications do not already contain the new information required by the amendments.

**EFFECTIVE DATES:** With respect to registrants or applicants whose municipal securities dealer registration is either effective or pending on October 6, 1980, the effective date of the amendments is December 28, 1980. With respect to other applicants, the effective date of the adopted amendments is October 6, 1980.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** On July 17, 1978, the Securities and Exchange Commission published and solicited comments concerning three proposed substantive amendments and two proposed technical amendments to Form

MSD. The Commission has determined to adopt certain of the substantive amendments described below and the two technical amendments. The Commission, in a companion release, is withdrawing the proposed substantive amendment to the instruction to item 6 of Form MSD.<sup>1</sup>

The first proposed substantive amendment would amend Form MSD's definition of the phrase "municipal securities dealer activities" in the instructions to Form MSD to conform to the definition of that term in rule G-1(b) of the Municipal Securities Rulemaking Board (the "MSRB").<sup>2</sup> As originally adopted, MSRB rule G-1 included four types of activities as "municipal securities dealer activities"; this list of activities was incorporated verbatim into Form MSD. After the Commission adopted Form MSD, the MSRB amended rule G-1 to expand the list of "municipal securities dealer activities" to include (1) financial advisory and consultant services in connection with the issuance of municipal securities and (2) activities which involve communication, directly or indirectly with public investors in municipal securities. As a result, the instructions in Form MSD do not conform to the MSRB's current definition of the term "municipal securities dealer activities." The amendment would replace the current list of activities enumerated in Form MSD with language referring to the definition of the term "municipal securities dealer activities," thus conforming the two definitions eliminating the need for future amendments to the same instructions in the event additional amendments to the term, as defined in MSRB rule G-1, become effective.

The second proposed amendment would permit certain persons named in response to item 5 of Form MSD, who are required to complete a separate Schedule A,<sup>3</sup> to substitute for that

<sup>1</sup>The Commission published and solicited comments concerning the proposed amendments in Securities Exchange Act Release No. 14971 (July 17, 1978) (43 FR 32309 (1978)). The Commission, in this release, is adopting two of the substantive amendments and the two technical amendments. In Securities Exchange Act Release No. 17101 (August 28, 1980), the Commission is withdrawing the proposed substantive amendment to the instruction to item 6 of Form MSD. See discussion beginning at fn. 5, *infra*.

<sup>2</sup>MSRB rule G-1 defines the term "separately identifiable department or division of a bank" for purposes of Section 3(a)(30) of the Securities Exchange Act (the "Act") (15 U.S.C. 78c(a)(30)).

<sup>3</sup>Each person directly engaged in the management, direction or supervision of any of the applicant's or registrant's municipal securities dealer activities, as enumerated in MSRB rule G-1(b), is required to be listed in response to item 5 and on Schedule A of Form MSD. Such persons include personnel responsible for the clearance and

schedule Form MSD-4.<sup>4</sup> In order to satisfy the requirements in MSRB rule G-7 with respect to information concerning associated persons, the federal bank regulatory agencies have uniformly adopted Form MSD-4, which every bank municipal securities dealer is required to submit to its appropriate regulatory agency on behalf of each municipal securities principal or municipal securities representative associated with such bank dealer. Applicants would still be required, however, to complete a Schedule A for any disciplined personnel named in response to item 7 of Form MSD even if such persons have also completed a Form MSD-4, since Schedule A solicits additional disciplinary information which is not available on Form MSD-4.

The third proposed substantive amendment would amend the instruction to item 6 of Form MSD. Item 6 solicits information concerning any person who "directly or indirectly control(s) any of the applicant's municipal securities dealer activities." The current instruction can be interpreted to exclude members of the board of directors of a bank dealer and of a parent bank holding company (if any) from the category of persons considered to control directly or indirectly an applicant bank's municipal securities dealer activities. The proposed amendment to the instruction to item 6 would explicitly require a bank municipal securities dealer, whether it applies for registration as a whole or as a separately identifiable department or division, to list on Schedule B all the members of the board of directors of the applicant, or of the bank of which it is a part, and of the parent bank holding company, if any.

The first proposed technical amendment to item 1 of Form MSD would facilitate the processing of registration forms filed by applicants which intend to succeed to and continue the business of another registered municipal securities dealer by requiring that such applicants check a box on the form indicating their successor status. The second proposed technical amendment would make a minor correction to item 10(c) of Form MSD to avoid an overlap with item 12(h) of the form. Under the proposed amendment, an applicant which is a department or

processing activities of the bank with respect to transactions in municipal securities.

<sup>4</sup>Form MSD-4 is an abbreviation for the form entitled "Uniform Application for a Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer." The information required by Form MSD-4 is substantially identical to, or more detailed than, similar information required on Schedule A.